



Signed: September 20, 2011

EDWARD D. JELLEN  
U.S. Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

In re:

**ANDRONICO'S MARKETS, INC.,**  
A California Corporation, aka  
Andronico's Community Markets,

Debtor.

1200 Irving Street  
San Francisco, CA 94122

Employer Tax I.D. No.: 94-1307395

Case No. 11-48963-EDJ-11

Chapter 11

Date: September 20, 2011

Time: 10:30 a.m.

Place: United States Bankruptcy Court  
1300 Clay Street, Courtroom 215  
Oakland, CA 94612

Judge: Honorable Edward D. Jellen

**AMENDED ORDER APPROVING OVERBID PROCEDURES AND RELATED  
MATTERS RE SALE OF CERTAIN ASSETS OF THE DEBTOR**

Upon the MOTION FOR ORDER (1) MODIFYING BID PROCEDURES, AND (2) AMENDING BID PROCEDURES ORDER (the "Motion") filed with the Court (the "Court" or the "Bankruptcy Court") on September 19, 2011 by Andronico's Markets, Inc., the debtor and debtor in possession herein (the "Debtor") for entry of an order amending the ORDER APPROVING OVERBID PROCEDURES AND RELATED MATTERS RE SALE OF CERTAIN ASSETS OF THE DEBTOR entered on September 8, 2011 [Dkt. 129] (a) approving certain bid procedures (as amended prior to the hearing, the "Bid

1 Procedures”) in connection with the sale (the “Sale”) of the Debtor’s Purchased Assets<sup>1</sup>, (b)  
2 designating Renwood Andronico Lending 1, LLC (or its designee) (“Renwood”) as the Stalking  
3 Horse Purchaser (the “Stalking Horse Purchaser”), (c) approving the payment of the Breakup Fee to  
4 Renwood in accordance with the terms and conditions of the Purchase Agreement and as set forth in  
5 this order (the “Amended Bid Procedures Order”), (d) establishing and approving the procedures to  
6 determine, and the manner of notice with respect to, the amounts to be paid and actions to be taken  
7 to cure defaults, if any, under the executory contracts and unexpired leases to be assumed by the  
8 Debtor and assigned to the Successful Bidder in connection with the Sale, (e) approving the manner  
9 of notice of the proposed Sale, the Bid Procedures, and the Sale Hearing, and (f) scheduling a Sale  
10 Hearing to include an auction (the “Auction”) in connection with the Sale; the MOTION FOR ORDER  
11 APPROVING OVERBID PROCEDURES AND RELATED MATTERS RE SALE OF CERTAIN ASSETS OF THE  
12 DEBTOR (as amended orally at the hearing, the “Bid Procedures Motion”) having come on for  
13 hearing before the Court pursuant to an order shortening time on August 31, 2011 at 3:30 p.m. which  
14 hearing was continued to September 8, 2011, and the hearing on the Motion having come on for  
15 hearing before the Court pursuant to an order shortening time on September 20, 2011 at 10:30 a.m.  
16 before the Honorable Edward D. Jellen, United States Bankruptcy Judge; the DECLARATION OF  
17 DORIS A. KAELIN IN SUPPORT OF MOTION FOR ORDER (1) MODIFYING BID PROCEDURES, AND (2)  
18 AMENDING BID PROCEDURES ORDER having been filed on September 19, 2011 (the “Kaelin  
19 Declaration”) attaching as Exhibit “A” thereto the proposed modified bid procedures. The Debtor  
20 appeared by Doris A. Kaelin of Murray & Murray, A Professional Corporation; Renwood appeared  
21 by counsel Steven M. Hedberg of Perkins Coie LLP; the Official Committee of Unsecured Creditors  
22 appeared by counsel John D. Fredericks of Winston & Strawn LLP; other appearances, if any, were  
23 as noted in the record; the Court having determined that, to the extent set forth herein, the relief  
24 requested in the Bid Procedures Motion and the Motion is in the best interests of the Debtor, its  
25 estate, creditors and other parties in interest; due and appropriate notice of the hearing on the Bid  
26 Procedures Motion and the Motion and the relief requested therein was provided by the Debtor; and

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28 <sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Motion and/or the Bid Procedures.

1 after consideration of the Bid Procedures Motion and the Motion to the extent of the relief granted  
2 herein, and the remainder of the record herein, and after due deliberation thereon; and good and  
3 sufficient cause appearing therefore, it is hereby:

4 **FOUND, CONCLUDED, AND DECLARED THAT:**<sup>2</sup>

5 1. This Court has jurisdiction over this matter and over the property of the Debtor and  
6 its estate pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §  
7 157(b)(2). Venue is proper in this District and before this Court pursuant to 28 U.S.C. §§ 1408 and  
8 1409.

9 2. Good and sufficient notice of the Bid Procedures Motion and the Motion and the  
10 relief sought therein has been given. A reasonable opportunity to object or be heard regarding the  
11 relief requested in the Bid Procedures Motion and the Motion has been afforded to parties in interest,  
12 and no other or further notice is required under the circumstances.

13 3. The Bid Procedures were proposed in good faith, are fair, reasonable and appropriate  
14 and are designed to maximize the value of the Debtor's Purchased Assets.

15 4. Approval of the Break-Up Fee is a necessary and appropriate inducement to the  
16 Renwood to (i) make the initial offer that serves as the "floor" for further bidding, and (ii) negotiate  
17 and enter into the Purchase Agreement.

18 5. Absent the Breakup Fee, the Minimum Initial Bid, and the Overbid Increment, the  
19 Debtor may lose the opportunity to obtain the highest and best available offer for the Purchased  
20 Assets and the protections afforded by the Purchase Agreement.

21 6. The Debtor has have articulated good and sufficient reasons for this Court to grant the  
22 relief requested in the Bid Procedures Motion and the Motion regarding the Bid Procedures and has  
23 demonstrated sound business justification to support such relief.

24 7. The entry of this Amended Bid Procedures Order is in the best interests of the Debtor,  
25 its estate, its creditors and other parties in interest; and it is therefore

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28 <sup>2</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of  
fact when appropriate. See Fed. R. Bankr. P. 7052.

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1 Deposit prior to the payment of the proceeds of such sale to any third party asserting a lien on the  
2 Purchased Assets, and shall be free and clear of any such lien.

3 14. The obligation of the Debtor to pay to the Breakup Fee shall be taken into account in  
4 the Debtor's determination of the highest and best bid in each round of bidding. Renwood, to the  
5 extent it participates in the Auction, shall receive a credit equal to the Initial Credit Bid Amount,  
6 any amounts bid in excess of the Initial Credit Bid Amount (only up to the full amount of the  
7 Prepetition Debt and the DIP Facility), and the Break-Up Fee in each round of bidding when  
8 bidding at the Auction.

### 9 **The Auction and Sale Hearing**

10 15. The Auction shall take place at the Sale Hearing which is hereby scheduled for  
11 October 13, 2011 at 9:00 a.m. (Pacific time).

12 16. In the event the Debtor does not receive by 5:00 p.m. (Pacific time) on **October 7,**  
13 **2011** (the "Bid Deadline") at least one Qualified Bid for the Purchased Assets, other than the  
14 Purchase Agreement, Renwood will be deemed the Successful Bidder and the Debtor will seek  
15 approval of its sale to Renwood pursuant to the Purchase Agreement at the Sale Hearing.

### 16 **Notice of Bid Procedures and Sale Motion**

17 17. As soon as practicable following entry of this Amended Bid Procedures Order and  
18 not less than twenty-one (21) days prior to the Sale Hearing, the Debtor shall cause the Sale Notice  
19 and a copy of this Bid Procedures Order and the approved Bid Procedures to be sent by first-class  
20 mail, postage-prepaid, to all persons on the Sale Mailing List; provided that potential bidders may be  
21 served by email where an email address is available.

22 18. Not later than twenty-one (21) days prior to the Sale Hearing, in addition to the Sale  
23 Mailing List, the Debtor shall cause the Sale Notice to be sent by first-class mail, postage-prepaid, to  
24 all persons on the Debtor's creditor matrix, all persons who have filed proofs of claim, and persons  
25 who have filed a request for special notice in the case.

26 19. The Debtor is authorized to use the service lists maintained by its counsel for all  
27 mailings contemplated hereunder (rather than the Court's mailing matrix) in satisfaction of the  
28 requirements of Bankruptcy Local Rule 2002-1(c); and provided further, the Debtor may use, in

1 addition to the Court-appointed notice agent, an outside copy service of its choosing to handle the  
2 duplication and mailing of all pleadings to be mailed in connection with the Sale, utilizing the  
3 service lists maintained by Debtor's counsel. Payment to the notice agent and/or any such outside  
4 service company utilized by the Debtor shall be in accordance with the Debtor's cash collateral  
5 budget with Renwood.

#### 6 **Notice of Assumption Motion**

7 20. As soon as practicable following entry of this Amended Bid Procedures Order and  
8 not less than twenty-one (21) days prior to the Sale Hearing, the Debtor shall cause the Assumption  
9 Notice<sup>3</sup> to be served on the Sale Mailing List, via first class mail, with an attached schedule setting  
10 forth the Cure Amounts; provided that potential bidders may be served by email where an email  
11 address is available. If no Cure Amount is listed, the Debtor shall state in the notice that it believes  
12 that there is no Cure Amount owing to the party to such executory contract or unexpired lease.

#### 13 **Moving Papers (Bid Procedures, Sale Motion and Assumption Motion)**

14 21. As soon as practicable following entry of this Amended Bid Procedures Order and  
15 not less than twenty-one (21) days prior to the Sale Hearing, the Debtor shall cause service of the  
16 pleadings in support of the Sale Motion (which shall include as exhibits, the Purchase Agreement  
17 (excluding any confidential exhibits or schedules), the Assumption Motion<sup>4</sup>, and all declarations in  
18 support thereof, by first class mail (except as noted at Paragraph 21(e)) upon (a) the Office of the  
19 United States Trustee for the Northern District of California, Oakland Division; (b) counsel for  
20 Renwood; (c) the Committee and its counsel; (d) all entities (or counsel therefor) known to have  
21 asserted any lien, claim, encumbrance, right of refusal, or other property interest in or upon the  
22 Debtor or the Purchased Assets, including parties with PACA claims; (e) all persons that have  
23 expressed a bona fide interest in acquiring the Purchased Assets or that the Debtor believes may be  
24 interested in submitting a competing bid for assets of the Debtor (who may be served by email where  
25 an email address is available); (f) the Internal Revenue Service and all state and local taxing

26 <sup>3</sup> The definition of Assumption Notice is hereby revised to include authority to reject any executory  
27 contracts and unexpired leases that are not assumed and assigned to the Successful Bidder.

28 <sup>4</sup> The definition of Assumption Motion is hereby revised to include authority to reject any executory  
contracts and unexpired leases that are not assumed and assigned to the Successful Bidder.

1 authorities; (g) all entities who have filed a notice of appearance and request for service of papers in  
2 this case; and (h) all non-debtor parties to any executory contract or unexpired lease that is subject to  
3 assumption and assignment or rejection (the “Assumed Contracts”).

#### 4 **Objection Bar Dates**

5 22. Objections, if any, to the Sale, must: (a) be in writing; (b) comply with the Federal  
6 Rules of Bankruptcy Procedure and the Bankruptcy Local Rules; (c) be filed with the Clerk of the  
7 Bankruptcy Court for the Northern District of California, Oakland Division, 1300 Clay Street, 3<sup>rd</sup>  
8 Floor, Oakland, California 94612, on or before **October 6, 2011**, and (d) be served no later than  
9 **October 6, 2011** upon (a) Debtor’s counsel, John Walshe Murray of Murray & Murray, A  
10 Professional Corporation, 19400 Stevens Creek Boulevard, Suite 200, Cupertino, CA 95014,  
11 facsimile (650) 852-9244, email: jwmurray@murraylaw.com; (b) counsel for the Buyer, Jeanette L.  
12 Thomas of Perkins Coie LLP, 1120 N.W. Couch Street, Tenth Floor, Portland, OR 97209, facsimile  
13 (503) 346-2075; email: jthomas@perkinscoie.com; (c) the Office of the United States Trustee, Attn:  
14 Lynette Kelly, 1301 Clay Street, Suite 690N, Oakland, CA 94612, facsimile (510) 637-3220; email:  
15 lynette.c.kelly@usdoj.gov; and (d) counsel for the Committee, David A. Honig, Winston & Strawn  
16 LLP, 101 California Street, Suite 3900, San Francisco, CA 94111, facsimile (415) 591-1400, email:  
17 dhonig@winston.com (the foregoing are collectively referred to as the “Service Parties”).

18 23. The non-debtor parties to the Assumed Contracts shall have until **October 6, 2011**  
19 (the “Cure Bar Date”) (a) to object to the assumption and assignment of any of the Assumed  
20 Contracts, (b) to object to the amount of the Cure Amounts, or (c) to assert that non-monetary  
21 defaults, conditions or pecuniary losses or other amounts must be cured or satisfied (including all  
22 compensation for any pecuniary loss resulting from a default in respect of the Assumed Contracts)  
23 under any of the Assumed Contracts in order for such Assumed Contracts to be assumed and  
24 assigned. Such party must file and serve an objection upon the Service Parties setting forth (i) the  
25 basis for the objection (non-monetary or otherwise), and, if applicable, (ii) the amount the party  
26 asserts as the cure amount and/or the amount of all compensation for any actual pecuniary loss  
27 resulting from a default in respect of the Assumed Contracts (with appropriate documentation in  
28 support thereof). If no objection is received by the Cure Bar Date, the Cure Amounts attached to the

1 Assumption Notice shall be controlling as to the amount necessary to be paid to cure under §  
2 365(b)(1)(A) and (B) notwithstanding anything to the contrary in any Assumed Contract or other  
3 document, and the non-debtor party to the Assumed Contract shall be forever barred from asserting  
4 any claims for the Cure Amount against the Debtor, Renwood, or such other purchaser of the  
5 Purchased Assets through the effective date of the assumption and assignment in respect of such  
6 Assumed Contract, and each party to any Assumed Contracts shall be deemed to have consented to  
7 the assumption and assignment of the Assumed Contract to Renwood or any other purchaser of the  
8 Purchased Assets.

9 24. Any non-debtor party to any executory contract or unexpired lease which is not  
10 designated as an Assumed Contract and is designated to be rejected (a “Rejected Contract”) shall  
11 have until **October 6, 2011** to object to the rejection of any Rejected Contract. Such party must file  
12 and serve an objection upon the Service Parties setting forth the basis for the objection.

13 25. The failure of any person to file its objection timely and in accordance with the  
14 requirements of this Amended Bid Procedures Order shall bar the assertion at the Sale Hearing or  
15 thereafter of any objection to either the Sale Motion or the Assumption Motion and the Debtor’s  
16 consummation and performance of the Purchase Agreement, including the sale and transfer of any of  
17 the Debtor’s assets free and clear of any and all liens, claims and encumbrances (other than  
18 permitted encumbrances provided for expressly in the Purchase Agreement or alternative purchase  
19 agreement entered into with the Successful Bidder). Notwithstanding anything herein to the  
20 contrary, if any non-debtor party to an Assumed Contract (a “Contract Counterparty”) is not satisfied  
21 with the showing of adequate assurance of future performance by any Qualified Bidder by the Sale  
22 Hearing, then the Contract Counterparty shall have the right to raise that objection to the Assumption  
23 Motion prior to the Auction at the time of the Sale Hearing.

#### 24 **Additional Provisions**

25 26. Service of the notices described herein on the parties entitled to receive such notices  
26 pursuant to this Amended Bid Procedures Order shall constitute proper, timely, adequate and  
27 sufficient notice thereof and satisfies the requirements of sections 105 and 363 of the Bankruptcy  
28 Code, Rules 2002, 6004, 7004, 9006 and 9014 of the Bankruptcy Rules and the requirements of the

1 local rules of this Court, and no other or further notice is or shall be required.

2 27. The Debtor is authorized to make a copy of the executed Purchase Agreement  
3 available on the website maintained by the claims and notice agent appointed by the Court.

4 28. This Court shall retain jurisdiction over any matters related to or arising from the  
5 implementation of this Amended Bid Procedures Order and the Bid Procedures.

6 29. Each bidder participating at the Auction shall be required to confirm that it has not  
7 engaged in any collusion with respect to the bidding or the Sale that would violate Section 363(n) of  
8 the Bankruptcy Code.

9 30. In the event the Debtor is unable to obtain Court approval of the Sale Motion or  
10 otherwise tender performance to the Successful Bidder, the sole remedy of the Successful Bidder  
11 (other than Renwood whose rights are established by the Purchase Agreement) shall be the return of  
12 its Sale Deposit.

13 **\*\* END OF ORDER \*\***  
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**COURT SERVICE LIST**

**Debtor**

Bill Andronico, CEO  
Andronico's Community Markets  
1200 Irving Street  
San Francisco, CA 94122